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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,325	06/26/2003	Herron W. Elliott	1266	2869

7590

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EXAMINER

TRETTEL, MICHAEL

ART UNIT

PAPER NUMBER

3673

DATE MAILED: 04/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

**Application No.**

10/603,325

**Applicant(s)**

ELLIOTT, HERRON W.

**Examiner**

Michael Trettel

**Art Unit**

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5,6,10 and 11 is/are rejected.
- 7) ☒ Claim(s) 2-4 and 7-9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 06/23/2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

Claim 3 is objected to because of the following informalities: --a-- should be inserted after "of" in line 3.. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Fontenot et al (5,329,658). Fontenot et al shows a blanket elevator apparatus 10a in Figures 3 to 7 that is of particular interest. The device comprises an elevating frame 18a that is supported upon a pair of legs 19 over the foot end of a mattress to support a blanket. A blanket lock plate 26 is also provided that slips between the mattress and box spring, the lock plate 26 includes a pair of leg receiving apertures 34 at one edge that receive the legs 19 of the frame 18a.

Claims 1, 5, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Good (2,602,171). Good shows a bedding elevator device 11 for use upon the foot end of a mattress. The elevating device includes a pair of retainers 2 that are slipped between the mattress and boxspring and which include tubular sockets 1 that receive vertical legs 4 that form part of a

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bedding elevating frame. The bedding elevating frame 11 includes horizontal legs 5 and cross arms 13, 14 that telescope into one another to adjust the width of the device. The legs 4 also include lock notches 6 that engage a spring latch 8 attached to the sockets 1 of the retainer.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Good.

The material used to construct the Good bedding elevator is not described, however it is well known in the art to use rubber coated plastic or metal tubing to construct frames made from a tubing type material. Examples such as the tubing used in baby strollers, push handles used in lawnmowers, side rails used in beds, etc are well known in general and as such it would have been obvious to the skilled artisan that the tubing used to make the Good bed elevator could have been selected from such materials. The reason for doing so would be to use a padded surface from the tubing in order to prevent any injury to a user of the bedding elevator.

***Allowable Subject Matter***

Claims 2 to 4 and 7 to 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cobb (2,642,589), Gibbons Sr., Hannaberg, Merriman, Moore, and Cobb (5,881,406) show bedding elevating devices that are of general interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Trettel whose telephone number is 703-308-0416. The examiner can normally be reached on Monday, Tuesday, Thursday, or Friday from 7.30 am to 5.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford, can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

  
Michael Trettel  
Primary Examiner  
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